IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.11 of 1999.

Judgement reserved on: 27.7.2007

Date of decision: 24.9.2007.

The Regional Engineering College Society & Ors…….Appellants

Vs.

Parkash Chand Anand …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. K.D. Sood, Advocate.

For the Respondent : Mr. Suneet Goel, Advocate.

Kuldip Singh, Judge.

The appellants-defendants are in appeal against judgment, decree dated 24.10.1998 passed by learned District Judge, Hamirpur in Civil Suit No.48 of 1991 (H.C)/03 of 1995 (RBT).

The brief facts of the case are that respondent filed a suit for declaration and permanent prohibitory injunction against appellants in this Court which was registered as CS No.48 of 1991 but later on transferred to learned District Judge, Hamirpur on 10.3.1995.

2. The further facts are that appellant No.1 through appellant No.2 in the year 1987 issued a notice inviting tenders for the following works:-

(a) "Construction of Workshop building for REC, Hamirpur (sub head): Building Portion only); &

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

(b) *Construction of 36 Nos. residences for Lecturers' Unit, REC, Hamirpur (SH: C/o 12 Nos. residences inrone Block) (Building portion and internal water supply and sanitary installations)".*

The tenders were invited on 20.5.1987 and 26.11.1987 respectively. The respondent submitted tenders which were accepted by appellant No.2 for and on behalf of appellant No.1 vide letters of acceptance dated 1.6.1987 ad 4.2.1988 and consequently parties entered into formal contract agreements No.2 and 30 of the year 1987-88 in the office of appellant No.2. The respondent was required to complete the work within a stipulated time besides maintaining adequate progress during work and to complete 1/8th of the work in 1/4th of the stipulated time, 3/8th of the work in ½ of the stipulated time and 3/4th of the work in 3/4th of the stipulated time.

3. The appellants failed to honour their commitments both express and implied. They could not provide the respondent with the required site, designs, drawings, instructions and stipulated construction materials in adequate quantities in order to enable the respondent to complete the work within time and as a consequence, the stipulated date for completion of the work had to be extended time and again on account of breach of contract on the part of the appellants.

4. The appellants continued to accept execution of the work by the respondent even after the dates originally stipulated for completion thereof during the extended periods as the delay in execution of the works was on account of the lapses on the part of

the appellants and for which the respondent cannot be held responsible.

5. The respondent was also prevented from completing the works within the stipulated time on account of the fixing of priorities by the appellants for completion of part of the works and on account of the appellants taking over possession of part of the works while the remaining works were in progress. The respondent had to comply with the orders of the appellants and handed over part of the works to them so as to ensure that they do not suffer any loss, there was resultant hindrance in the progress of carrying cut construction at the site particularly of the workshop building. The appellants were given possession of the works at the earliest by the respondent even though the respondent was not legally bound to do so. In these circumstances appellants did not suffer any loss whatsoever owing to delay in completion of the buildings and appellants could not recover any compensation for the alleged delayed completion which was attributable to the appellants.

6. The appellant No.2 by usurping powers unilaterally imposed compensation of Rs.3,35,343/- on the respondent for the work relating to the workshop building under Agreement No.2 of 1987-88 and Rs.2,17,772/- regarding work relating to lecturers residences under Agreement No.30 of 198-88. On the representation of respondent made to appellant No.3, the amount of compensation in respect of the workshop building under Agreement No.2 was reduced to Rs. 67,068/-. However, amount of compensation in regard to Lecturers residences under Agreement No.30 was not reduced.

The delay in completion of the works was not attributable to the respondent but it was attributable to the appellants, therefore, no compensation could have been imposed upon the respondent. The compensation has been imposed on the respondent without affording him an opportunity of being heard, the same is bad in law besides being without jurisdiction.

7. The appellants contested the suit by filing common written statement. They took legal objections as to mis-joinder of parties, valuation, mis-joinder of causes of action. It has been submitted that imposition of penalty/compensation is not justiciable. The sites were to be made available to the respondent by the appellants. As per letter dated 17.9.1987 **'**Nishans**'** at site were given earlier for workshop building as per drawings for which the work was in progress. The respondent was again informed vide letter dated 19.9.1987 that instead of 12 columns, the excavation of 22 columns had been completed and other 4 columns were in progress. The respondent vide letter dated 27.11.1987 was informed that complete site for which the construction was to be done, had already been handed over to him. This fact was confirmed by the respondent vide his letter dated 16.12.1987. The unavoidable hindrance in completion of work was duly accounted for while granting first extension of time to the respondent vide letter dated 10.2.1988 of the Executive Engineer whereby the respondent was allowed to complete the work upto 18.4.1988. In the case of Lecturers residences, the respondent was informed vide letter dated 8.7.1988 that the complete site had been handed over to him on 25.2.1988. The appellants thus denied

the case of the respondent that site was not handed over to him in time.

8. The appellants also submitted that requisite materials were supplied to the respondent in time. The steel required for the workshop building was to be arranged by the respondent himself. The designs and drawings were supplied to the respondent as per site requirement. Any genuine hindrance has been accounted for while granting extension of time. The respondent was negligent in executing the work, he was asked to speed up the work through many letters. However, he failed to execute the work within the stipulated period and the appellants extended the time limit in good faith just to keep the contract alive but despite that the respondent was not able to complete the works even during the extended period. Accordingly, the appellants were well within their right to take action against the respondent as per terms and conditions of the agreement. The workshop block comprised of different halls, the respondent failed to complete the work within time, there was no alternative except to take possession of the built up portion and occupation of one hall did not pose any hindrance in simultaneous completion of the remaining halls. The workshop building was not completed even after lapse of 4 years and the some work was still to be carried out at the time of filing of the written statement.

9. The amount of compensation in respect of workshop was decided by appellant No.3 in terms of agreement, but the amount was not recovered so as to enable the respondent to complete the remaining work. The partial possession of workshop halls was taken

by the appellants with the consent of the respondent. In brief the appellants contested the claim of the respondent. The respondent filed replication wherein he denied the stand taken by the appellants and reiterated the case set up by him in the plaint. The following issues were framed on the basis of pleadings of the parties.

1. *Whether appellant No.2 and 3 are not necessary parties? OPD*
2. *Whether the suit in the present form does not lie? OPD*
3. *Whether the value of the suit for the purposes of Court fee and jurisdiction has not been properly assessed? OPD*
4. *Whether the suit is bad for mis-joinder of causes of action? OPD*
5. *Whether the delay in the exexcution of the work was caused due to acts of omission and commission of the appellant as alleged? OPP*
6. *Whether the compensation assessed by appellant No.2 is without jurisdiction and also arbitrary and illegal. If so, its effect? OPD*
7. *Whether the respondent is entitled to the relief of declaration and permanent prohibitory injunction as prayed for? OPP*
8. *Relief.*

The issues No.2, 3 and 7 were decided earlier. The learned District Judge decided issues No.1,4,5 and 6 and decreed the suit vide impugned judgment, decree. The appellants-defendants are in appeal.

10. I have heard the learned counsel for the parties and gone through the record. The learned counsel for the appellants has

submitted that the Court below has misconstrued and misinterpreted the material on record and has erred in decreeing the suit. The delay in execution of the various works is not attributable to appellants, it is attributable to respondent only. The learned counsel for the respondent has supported the impugned judgment, decree.

11. There is no dispute that the work relating to the workshop building was awarded to the respondent on 1.6.1987 and the work was to commence thereafter within 15 days that is on or before 15.6.1987 and was to be completed within 6 months that is upto 15.12.1987. The work in respect of Lecturers residences was awarded on 4.2.1988. The work on this project was to commence on or before 19.2.1988 and was agreed to be completed within a period of 18 months , that is to say by 19.8.1989. The works of both the projects could not be completed within the stipulated period and the time limit for completion of the work was extended from time to time. The respondent has attributed delay to the appellants for completion of the work whereas appellants have attributed delay to the respondent.

12. PW-1 Subash Chand son and General Power of Attorney of respondent has appeared as PW-1. According to him for executing the work of workshop building site was to be handed over by the appellants, similarly, drawings, designs, cement and steel was to be provided by the appellants. The appellants handed over the site of work partly but did not supply the drawings when the work was started. They changed the drawings time and again. The entire site was not handed over, therefore, work could not be speeded up. The

complete site of the workshop building was handed over after six months and the drawings were supplied till 1989 that too after changing. The payments were not given in time. The second work was awarded in February, 1988 and the complete site of this work was handed over in the end of year 1989, but complete drawings were not supplied. This work was to be completed in 18 months. The penalty was imposed two months earlier then the stipulated date of completion of the work. The drawings of doors, windows, sanitary fittings, stair case of this work were supplied till 1990-91. The colour scheme was given in the year 1993. The payment was not made in time. The penalties Ex.P-2 and Ex.P-3 were imposed by Executive Engineer who was not competent to impose the penalty. The delay was caused by the department. In cross-examination he has admitted that as per Clause 2 of the agreement the dispute was to be referred to Superintending Engineer. He has also stated that his father filed an appeal before Superintending Engineer regarding the compensation of Rs.3,35,343/- which was reduced to Rs.67,068/- in appeal. The Executive Engineer had imposed penalty of Rs.2,17,772/- for other work, an appeal was also filed before Superintending Engineer against this penalty but this penalty was not reduced.

13. PW-2 V.K. Soni, Junior Engineer. R.E.C. Hamirpur has deposed that site plan of workshop building was supplied to respondent on 7.8.1987. The revised plan was given on 26.8.1987 and then on 13.12.1988. The drawing No.256 was supplied on 1.1.1988. The drawings of doors and windows were supplied on

6.10.1987 and revised drawings on 14.2.1989. The site plan of cup board was supplied on 13.12.1988. The drawings of cup board were given on 9.11.1989. The drawings of 'Chhaja' were given on 19.4.1988 and revised drawings of 'Chhaja' were given on 30.8.1988. The drawings of second work were given on 25.2.1988. The drawings of stair case were given on 28.6.1989 and that of doors and windows on 1.2.1989, the drawings of toilets and slabs were given on 6.4.1991. In cross-examination he has stated that workshop building work was to be completed by the contractor upto 1.12.1987.

14. DW-1 R.K. Gupta, SDO, HP PWD has stated that he remained posted as Assistant Engineer in REC construction cell from July, 1986 to April, 1993. The site was handed over to the Contractor. The drawings, designs and material were supplied to him in time. No hindrance was put by them in the work of the contractor. The work was slow as per the agreement. The Executive Engineer imposed 10% compensation on the respondent because of slow progress. The respondent filed an appeal before Superintending Engineer REC, who reduced the compensation. In cross-examination he has stated that workshop site was handed over to the contractor in June 1987. All the drawings were not supplied in one time but were supplied as per the progress of the work. He denied that appellants did not perform their part of contract as per agreement.

15. DW-2 B.S. Thakur, Assistant Engineer, REC has stated that he is working as Assistant Engineer in REC since May, 1993. The workshop work was completed in March, 1993. DW-3 P.C. Verma, Junior Engineer, PWD has stated that he remained posted as

Junior Engineer at Hamirpur from July 1987 to April 1990. Type IV-B construction was carried out in his supervision. This work was awarded on 4.2.1988 and was to be completed in 18 months but was not completed during his tenure. The site was handed over to P.C. Anand on 25.2.1988. The contractor started the work of foundation on 25.2.1988 and drawings , designs were supplied on 30.7.1988. The cement was supplied on 9.6.1988. The work was not completed in 18 months due to slow progress. The Executive Engineer was to propose the compensation and Superintending Engineer was to impose the compensation. In cross-examination he has stated that on 9.4.1988 the digging work of Blocks No.1,2,3 was over. He is not aware when the work was completed. After 30.7.1988 he had written to Assistant Engineer from time to time to supply drawings. The cement for the foundation was to be supplied by the Department which was given on 9.6.1988.

16. DW-4 Ajay Kumar, Junior Engineer (B & R) HP PWD has stated that he remained posted as Junior Engineer in REC Construction Cell from 5.5.1990 to 15.7.1994. He was J.E. of type IV-B quarters. This work was to be completed in 18 months but was not completed during that period because of slow progress. In cross-examination he has stated that steel for this purpose was to be supplied by the department. He has admitted that first floor steel concreting was ready on 4.11.1991. He has also admitted that on 11.5.1993 he prepared drawings for water tank. The work was completed in June, 1994.

17. DW-5 Onkar Singh Nirala, J.E. HP PWD has stated that he was posted J.E. REC Construction Cell from December, 1985 to July 1990. He was J.E. of workshop work. He supplied the material to the contractor in time during his tenure. The work was not completed in time due to slow progress. In cross-examination he has stated that this building was to have 28 pillars. Initially, site for 70% pillars was given. He has shown his ignorance that this building was to have 36 pillars and the department had handed over site for construction of 12 pillars.

18. DW-6 Sandeep Bhatnagar,J.E., Hamirpur has stated that since November 1991 he is working as J.E. REC, Hamirpur. The work of workshop was completed in January, 1993. There was no hindrance of the department for this work during his tenure. This work could not be completed within stipulated period as per award due to slow progress. In cross-examination he has shown his ignorance that this building was handed over partly to REC in 1988.

19. PW-2 V.K. Soni has stated that there was delay on the part of the appellants to hand over complete sites and supply the drawings designs to the contractor as per agreed time schedule. According to this witness site plan of workshop building was handed over to respondent on 7.8.1987. The revised site plan was supplied on 26.8.1987 and another site plan on 13.12.1988. This work was to be completed by 15.12.1987 . The department was continued to supply site plan to the respondent upto 13.12.1988. In other words the appellants themselves did not adhere to the time schedule for completion of the work and respondent cannot be held responsible

for causing delay in execution of the work within time. PW-2 has also stated that the drawings were supplied to the respondent on 6.10.1987, 1.1.1988, 14.2.1989 and plan of Cup Board was supplied on 13.12.1988 and drawings of Cup Board were supplied on 9.11.1989. The drawings of chajja were supplied on 19.4.1988 and the revised drawings on 30.8.1988. The appellants supplied drawings etc. to respondents from 7.8.1987 to 9.11.1989 whereas the workshop building was to be completed on or before 15.12.1987.

20. The drawings of Lecturers residences were supplied to the respondent on 25.2.1988 and he was informed after 7 months on 28.9.1988. The drawings of doors and windows were supplied on 1.2.1989 , drawings of stair- case were supplied on 28.6.1989, drawings of toilets and slab on 6.4.1991. In other words, the appellants continued to supply drawings to the respondent upto 6.4.1991. The date of completion of this building was 19.8.1989.

21. It has come on record in the statement of V.K. Soni that respondent started construction of workshop building on 12.6.1987 and that of Lecturers residences on 25.2.1988. In other words the respondent started the work within time. As per PW-3 Krishan Chand payments with respect to workshop building were not made to the respondent in time. The evidence led by the appellants also supports the case of the respondent. DW-3 P.C. Verma has stated that respondent had started digging work of foundation on 25.2.1988. He has also stated that excavation work of Blocks No.I,II, and II was completed by 9.4.1988 and Assistant Engineer had been writing from time to time even after 30.7.1988 for supply of drawings. The

earth cutting was to be done by the department to clear the site. DW-4 Ajay Kumar has stated that drawings for water tank were prepared by him on 11.5.1993. As per letter Ex.D-2, the drawings for workshop building were supplied to respondents on 17.9.1987. The work of this building was started on 12.6.1987. Thus, the drawings were supplied after the gap of three months. The total period for completion of this building was six months. It has come on record that payments were not made to the respondent in time on several occasions.

22. The perusal of Clause 2 of the agreement would show that compensation was to be imposed by Superintending Engineer whereas in the instant case the compensation has been imposed by Executive Engineer, as per Ex,.P-2 and Ex.P-3. This imposition of compensation by Executive Engineer is in violation of Clause 2 of the agreement and therefore, such compensation is not binding on the respondent and the appellants can not take benefit of imposition of such compensation. In addition to illegality of imposition of compensation, the delay for completion of the work of both the works is not attributable to respondent, rather it is attributable to the appellants. The learned District Judge has appreciated the material on record properly. No case for interference has been made out by the appellants regarding the legality and imposition of compensation.

23. The suit is not bad for impleading appellants No.2 and 3, as they are the representatives of appellant No.1. In these circumstances, it cannot be held that they have been unnecessarily impleaded as parties in the suit. The suit is also not bad for mis-

joinder of causes of action. The findings recorded by learned District Judge are upheld.

24. The result of above discussion, the appeal is dismissed with no order as to costs.

(Kuldip Singh)
Judge

September 24 , 2007(sks)